IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.453 OF 2006
WITH
CIVIL APPLICATION NO.554 OF 2006

Mrs. Rashida Banu wd/o.Kassam Habib ..Appellant.

V/s.

Sikandar Hayat S/o Abdul Masjid & Ors. ..Respondents.

ALONGWITH

APPEAL FROM ORDER NO.187 OF 2001

Mrs. Rashida Banu wd/o.Kassam Habib
& ors. ..Appellants.

V/s.

Sikandar Hayat S/o Abdul Masjid & Ors. ..Respondents.

Mr.P.S.Dani for Ms.J.P.Thakkar for appellant.

Mr.A.L.N.Khatri for respondent No.1.

Mr.D.S.Sawant with Shri Rajesh B. Parab for respondent No.2.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 9, 2006.

P.C. :

1. Heard counsel for the parties.

2. Both these appeals are disposed by this common Judgment.

3. Admit.

4. Mr.Khatri waives notice for respondent No.1/original plaintiff. Mr.Sawant waives for respondent No.10/original respondent in the Notice of Motion. As short question is involved both the appeals are taken up for hearing forthwith by consent.

5. Both these appeals challenge Judgment and Order passed by the City Civil Court, Bombay dated November 10, 2000 in Notice of Motion No.2608 of 2000 in S.C.Suit No. 6584 of 1997. By the said Notice of Motion the plaintiff prayed for two different reliefs. First relief was to take action against the defendant No.1 for having violated the order of injunction passed by the trial Court in parting with the possession of room Nos.9 and 10 to the third party. The plaintiff also prayed for further relief of appointing Court Receiver in respect of the said two rooms and with further direction to the Court Receiver to secure vacant possession of the two rooms and thereafter, hand over possession thereof to the plaintiff as his agent without payment of security and royalty. These are the two orders which are passed in favour of the respondent herein by the trial Court.

6. After having considered rival submissions and going through the pleadings on record, I am inclined to uphold the order appointing Court Receiver to take over vacant possession of the two room Nos.9 and 10 in the suit property. The remaining direction contained in the Judgment and order of taking action against the defendant No.1 to detain her in Civil prison for one day and of payment of costs of the Notice of Motion quantified at Rs.3,000/- to the plaintiff and also of putting the plaintiff in possession of the two rooms as agent of the Court Receiver without payment of security and royalty is being set aside by this Judgment. I shall now proceed to record reasons for such course adopted by me.

7. Counsel for the respondent No.1/plaintiff during the course of argument submitted that if the order of appointing court receiver was to be affirmed by this court, so as to preserve the two rooms referred to in the impugned order, in that case, respondent No.1/plaintiff will not precipitate the matter, instead would withdraw the relief claimed against the defendant No.1 regarding her detention in Civil Prison and payment of costs of the Notice of

Motion as is ordered by the court below. Indeed, the counsel for the respondent No.1/plaintiff would contend that the finding recorded by the trial Court to pass such order is unexceptional. In view of the fair stand taken by the respondent No.1/plaintiff, the order passed by the lower Court directing detention of the defendant No.1 in Civil prison for one day and requiring her to pay costs of Notice of Motion quantified at Rs.3,000/- to the plaintiff, that part of the order is set aside. The respondent/plaintiff has taken this stand for the simple reason that the parties are closely related to each other and would not want defendant No.1 who is presently aged about 58 years to suffer humiliation. The gesture shown by the respondent No.1/plaintiff who is present in the court through counsel is appreciated by this court. Needless to observe that the fact that the order passed by the trial court directing detention of the appellant defendant No.1 in Civil Prison for one day or requiring her to pay costs of Notice of Motion which is set aside by this order is only on account of the gesture shown by the respondent No.1/plaintiff. That does not mean that the defendant No.1 has made out any case for setting aside the finding recorded by the trial Court, at least in relation to the fact that respondent has

been inducted in the two rooms, only after order of injunction came to be passed. It is also established from the record that the respondent No.1 has come in possession of those rooms allegedly as care taker of original occupant inducted by appellant/defendant No.1.

8. Be that as it may, it takes me to the second part of the order whereunder the lower Court has appointed the Court Receiver with regard to the two rooms to take over vacant possession of the said rooms and put the respondent No.1/plaintiff in possession thereof without security and royalty. In so far as challenge to this part of the order is concerned, I have no hesitation in confirming the opinion recorded by the Court below regarding the order appointing court receiver to take over vacant possession of the two rooms was imperative. To that extent the order in question will have to be upheld, as it does not suffer from any infirmity. The question however, is whether the appellant defendant No.1 can be heard to assert that she should be put in possession of the said two rooms as agent of the Court Receiver. It is not possible to accept such submission of the defendant No.1 who has been found to have wilfully disobeyed the order of injunction

passed by the trial court. Accordingly, the appellant/defendant No.1 cannot be shown any indulgence of being inducted as agent of the Court Receiver.

9. The next question however, is whether the order passed by the trial Court directing the Court Receiver to induct the respondent No.1/plaintiff in the two rooms as his agent without payment of security and royalty can be sustained. Both sides have vehemently contested this direction. In my opinion, having regard to the stand of the defendant No.1, which is founded on the registered documents that the defendant No.1 is the owner of the disputed rooms, directing the court receiver to induct some person other than defendant No.1 will be inappropriate. So far as defendant No.1 is concerned, I have already observed earlier that she cannot be shown that indulgence for having committed breach of the earlier order of injunction dated 23rd December, 1997 and 16th March, 1999 respectively. In the circumstances, I am disposed of to direct the Court Receiver only to take over vacant possession of the two rooms and keep the same in his custody under his lock and keys by putting seal on the rooms, to be retained till further orders are passed by the trial

court. The appropriate course in the fact situation of the present case, to my mind, is to direct the trial court to expedite the hearing of the suit. The trial Court shall in turn dispose of the pending suit preferably by end of March, 2007. This direction is issued as the suit pertains to year 1997. Besides, both the parties through counsel assure that they will extend full cooperation to the Trial Court for early disposal of the suit and shall not seek any adjournment for whatever reason before the trial Court.

10. While parting, it is placed on record that the respondent in the Notice of Motion-respondent No.10 contends through counsel that instead of keeping the premises in closed and locked condition, the Court may consider of allowing him to continue to occupy premises as agent of the court receiver as the claim of the said respondent is that he was in possession of the said two rooms only as caretaker of original occupant inducted by the defendant No.1 inspite of the order of injunction. The respondent No.10 cannot be permitted to occupy the disputed premises for the same reason, for which that relief is denied to defendant No.1. Moreover, the original occupant through whom the Respondent No.10 claims as

their care taker is not before this court nor have challenged the impugned order. The Respondent No.10 cannot claim better rights than his principal.

11. Accordingly, Appeals as well as civil application are disposed of on the above terms with no order as to costs.

12. Parties shall appear before the trial Court on 28th August, 2006 at 11 a.m. on which date the trial Court may proceed to assign suitable direction and date for hearing of the suit so that the same can be finally disposed of within the specified time.

13. Needless to observe that the Court Receiver will take all necessary measures to take over physical and vacant possession of the two rooms, if necessary by taking assistance of local police.

14. Respondent No.10 is personally present in the court and undertakes before this Court that there will be no need for employing police force to secure possession of the two rooms as he would personally ensure that possession thereof is handed over to the Court Receiver and comply with all formalities of handing over of the vacant possession of the two

rooms on or before 23rd August, 2006. That undertaking is accepted.